

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

THE STATE OF TEXAS, ET AL)

)

vs.) CASE NO. 4:20-CV-957-SDJ

)

GOOGLE LLC)

SPECIAL MASTER HEARING

MAY 2, 2024

SPECIAL MASTER HEARING, via Zoom, was taken in the above-styled and numbered cause before Special Master David Moran on the 2nd day of May, 2024, from 10:02 a.m. to 11:58 a.m., before Melinda Barre, Certified Shorthand Reporter in and for the State of Texas, reported by computerized stenotype machine, all parties appearing remotely via web videoconference, pursuant to the rules of procedure and the provisions stated on the record or attached hereto.

APPEARANCES

(ALL APPEARED VIA ZOOM VIDEO CONFERENCE.)

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ALSO PRESENT: David Moran, Special Master
William Nilsson

1 provide these facts.

2 SPECIAL MASTER: Okay. So I appreciate
3 that. Well, you know, I've ruled on that issue that --
4 the memos to the file from the interviews by the AG's
5 office when they interviewed whoever they interviewed
6 and however they reduced that to writing. Google sought
7 the production of those materials, and I've ruled on
8 that request as privileged.

9 I hear the States saying if you -- we
10 already have a ruling that the underlying document
11 itself is privileged. How could I then permit you to
12 ask from a testimonial standpoint testimonial evidence
13 for the exact same information? How could I dare do
14 that and try to walk out of this room and say I try to
15 rule consistently, right?

16 So help me out how you can get through a
17 deposition the same information that I've held you can't
18 get the other way in an interrogatory or some other
19 discovery device.

20 MR. AYCOCK: All of our questions just
21 have to do with the facts. What a third party told the
22 State of Texas, there's nothing privileged about that.
23 And so that's -- I don't think there's any question that
24 we've only asked for the underlying facts.

25 We're also now not asking necessarily for

1 interview memoranda to be produced. We would like to
2 talk to a witness who can say, When we interviewed News
3 Corp, this is what they said, or, They provided a
4 presentation about the following topic.

5 Those are the kinds of things that we
6 should be entitled to know, who complained about Google?
7 What were their complaints? We're not asking for their
8 mental impressions about who would make a good witness
9 or the strength of their case or any of those kinds of
10 things.

11 SPECIAL MASTER: Okay. All right. Thank
12 you.

13 Who's going to take that for the States?

14 MS. YOUNG: I can cover some initial
15 points, and then I welcome Mr. Young and Mr. DeRose and
16 Mr. Wilkerson to jump in as well.

17 SPECIAL MASTER: You're going to do a
18 sufficient job to cover the issue, but I'll let you have
19 one colleague, not -- you don't need three to back you
20 up. You don't need anyone.

21 MS. YOUNG: I was just acknowledging them.
22 I will cover everything. I will be quick, too.

23 So on Google's request for some
24 information in writing, we'll follow up on that; and I
25 think we can provide something quickly.

1 I think that goes to the fact of the
2 position the States have always taken is that a lot of
3 the information that Google seeks can be provided in rog
4 responses and things like that, and we will uncover to
5 kind of fill some of the gaps they've raised here in
6 writing.

7 I do want to note, I think Mr. Aycock
8 mentioned that they noticed a topic on having the
9 witness identify specific advertisers and publishers. I
10 pulled up the 30(b)(6) notice to Texas. I don't see
11 that. But that's something that we think is more
12 appropriately considered to be provided in writing. So
13 we will go back and take a look at that.

14 And I think that underscores also the fact
15 that the States have gone through incredible effort to
16 put all the facts that they're relying on in either
17 their very lengthy complaint or their interrogatory
18 responses and all of the other written discovery we've
19 provided Google. The States are not looking to hide any
20 facts.

21 One other point I wanted to touch up on on
22 lack of -- their allegations of lack of preparation.
23 I'm fresh off of a 30(b)(6) deposition I took of a
24 Google witness yesterday. She arrived with a huge -- it
25 was remote. So I wasn't in the room with her. She

1 arrived with a 14-document binder that was then -- the
2 contents of which were sent to me two minutes before the
3 deposition started. It had kind of a notes page, and
4 then it had 14 documents including some pretty lengthy
5 Excels.

6 That was fine. That happens in 30(b)(6)s,
7 right? She referenced the notes during the deposition.
8 She was designated on a number of topics. One of the
9 topics she was designated on was Google's competitive
10 intelligence tracking and tracking of competitors.

11 I asked her, Who are Google's competitors
12 as to the AdX product? She could name at most two or
13 three and said maybe there are others. Same with
14 respect to their Google Ad Manager product, right?

15 So, I mean, I think there's kind of this
16 issue that Google is expecting the States' witnesses to
17 come and just recite names and, in the instance of
18 irreparable harm, give legal conclusions that I think
19 that are out of bounds and do not reflect a lack of
20 preparation or inadequate testimony by Mr. Gordon.

21 But I think a good -- at this point in
22 time a good solution is for the States -- we are good
23 faith going to consider Google's request for information
24 and provide it in writing, just as Mr. McCallum and his
25 team have provided us information in writing. We don't

1 think making the States prepare another 30(b)(6) witness
2 to testify about this type of information that
3 analogously Google's 30(b)(6) witnesses have also not
4 been able to testify about is the solution here.

5 And then with respect to the work product
6 memos, I don't have that much more to say about it
7 because I think you hit the nail on the head. I don't
8 think you can consistently rule.

9 What they're asking for is essentially
10 another 30(b)(6) witness to go and review all of those
11 work product memos and try to parse what may be
12 nonprivileged factual information from mental
13 impressions, which we do not think can be done based on
14 our review of the memos.

15 SPECIAL MASTER: Back to the first issue,
16 so when will you provide in writing these, my word not
17 yours, supplemental or additional responsive materials
18 that Google has raised through Mr. Aycock?

19 MR. YOUNG: So Mr. Collier defended
20 Mr. Gordon's deposition, and I think he is currently in
21 the Meta depo. So I just want to double check with him.

22 I will represent that that was something
23 we were working on, and it may have gotten kind of
24 deferred just in the hustle and bustle. I will talk to
25 him; but I think we can endeavor to provide something by

1 STATE OF TEXAS

2 COUNTY OF HARRIS

3 REPORTER'S CERTIFICATE

4 SPECIAL MASTER HEARING

5 MAY 2, 2024.

6
7 I, the undersigned Certified Shorthand Reporter in
8 and for the State of Texas, certify that the facts
9 stated in the foregoing pages are true and correct.

10 I further certify that I am neither attorney or
11 counsel for, related to, nor employed by any parties to
12 the action in which this testimony is taken and,
13 further, that I am not a relative or employee of any
14 counsel employed by the parties hereto or financially
15 interested in the action.

16 SUBSCRIBED AND SWORN TO under my hand and seal of
17 office on this the 3rd day of May, 2024.

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19 
20

21 Melinda Barre, CSR

Texas CSR 2192

22 Expiration: 12/31/25
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